

1 Stephen B. Russell, P.E.  
2 Bernice Marks  
3 5937 East Aster Drive  
4 Scottsdale, AZ 85254  
5 (602) 604-4640

FILED  
2001 MAR -2 A 10 06  
KEVIN E. O'BRIEN  
CLERK  
U.S. DISTRICT COURT  
DISTRICT OF ARIZONA

7  
8 IN THE UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF ARIZONA

10 In re:

11 CHARLES THOMAS BROWN d/b/a TOM  
12 BROWN PREFERRED TRUST  
13 COMPANY,

14 Debtor,

15 MAUREEN GAUGHAN, Chapter 7 Trustee

16 Plaintiff/Judgment Creditor,

17 v.

18 ANN AKAMINE, *et al.*,

19 Defendants/Judgment Debtors.

Proceedings Under Chapter 7

No. 97-14228 PHX GBN

Adv. 99-00746

**AFFIDAVIT OF STEPHEN B. RUSSELL**

20 STATE OF ARIZONA )

21 ) ss.

22 County of Maricopa )

23 I, Stephen B. Russell, being first duly sworn upon my oath, depose and say:

24 1. Sometime back I was named as a defendant in an action brought by the Trustee  
25 in the above-referenced case.  
26

1           2.     Periodically thereafter I received documents from the Trustee indicating that  
2 matters in the bankruptcy were being processed.

3           3.     During 2000, I received correspondence from the Trustee's legal representatives  
4 inviting me to explain what documents I possessed reflecting transactions with Mr. Brown, and  
5 why judgment should not be taken against me and my wife, Bernice Marks.  
6

7           4.     I am not a lawyer nor have I obtained legal assistance in this matter prior to the  
8 date of receiving notice of judgment taken against me. I was under the reasonable belief that,  
9 based on my conversations with the Trustee's representatives, no judgment would be taken  
10 against me or my wife.

11          5.     In response to the Trustee's legal representative's request that I meet with them  
12 and explain our dealings with Mr. Brown and further explain why judgment against us was not  
13 appropriate, I met with the Trustee's lawyers in early August, 2000, and provided them with  
14 detailed information about my single investment/loan with Tom Brown, and the various  
15 investment/loans of my wife.

16          6.     In all conversations with the Trustee's legal representatives, I was acting on my  
17 own behalf as well as on the behalf of my wife, Bernice Marks.

18          7.     The information I provided to the Trustee's legal representatives indicated that I  
19 was personally involved in a single transaction which I undertook in good faith and for which  
20 the Trustee's debtor received reasonable equivalent value. Additionally, the transaction in  
21 which I received payment from Tom Brown only resulted in the return of my principal amount  
22 plus no more than \$600 in interest, not the \$6,000 plus reflected in the default judgment.  
23

24          8.     The information I supplied about Bernice Marks' loans similarly sets forth the  
25 basis upon which she should be considered a good faith net creditor of the Ponzi scheme rather  
26

1 than having received any profits, and also establishes that in each instance the debtor received  
2 reasonable equivalent value for any payment made to Bernice Marks.

3  
4 9. My dealings with Mr. Tom Brown were in good faith and I was without  
5 information whereby I had any concerns about the source of Mr. Brown's funds or Mr.  
6 Brown's ability to repay without compromising payments to other creditors. This is also true  
7 of my wife.

8 10. During my conversations with the Trustee's representatives, I provided them  
9 with information detailing my inability to repay any judgment rendered against me and with  
10 information indicating that the same financial inability prevented me and my wife from  
11 obtaining the assistance of counsel.

12 11. In response to my conversation with the Trustee's legal representatives, I was  
13 informed that there was no desire on behalf of the Trustee to obtain a judgment against me or  
14 Bernice Marks if our financial condition were as represented, in that such a judgment would  
15 merely place us in bankruptcy in addition to Tom Brown. During such conversations, I  
16 actually provided the Trustee with our 1999 tax return as evidence of our financial condition.

17 12. Based upon my communication with the Trustee's legal representative, I  
18 justifiably believed and relied upon the belief that there was no need for me to obtain legal  
19 counsel to defend my interests and that no judgment would be obtained against me or my wife.

20 13. From and after August 2000, there have been no individual communications  
21 between the Trustee's legal representatives and me, or my wife, indicating that my private and  
22 individual communications and agreement with them were no longer capable of protecting us  
23 against a judgment obtained by the Trustee.

24 14. From and after August 2000, the correspondence and court documents that I  
25 received were directed to all defendants without reference to whether separate individuals  
26

1 agreements or understandings had been reached with the Trustee's legal representatives. Had I  
2 been aware that a default judgment was actually going to be obtained against me, I would have  
3 attempted to resolve this matter by raising whatever defenses I could consistent with the  
4 information I supplied to the Trustee in August 2000.  
5

6 15. Upon information and belief, we have viable defenses to the judgment including,  
7 but not limited to, our good faith dealings with Tom Brown, our provision to Tom Brown of  
8 reasonably equivalent value for any payment made to us by Tom Brown, laches, statute of  
9 limitations, and that line of case law which holds that victims of a Ponzi scheme who invested  
10 or loaned money in good faith should not be penalized.

11 DATED this \_\_\_\_ day of February, 2001.

12  
13 see attached  
14 STEPHEN B. RUSSELL

15 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of February, 2001, by  
16 Stephen B. Russell.

17 \_\_\_\_\_  
18 Notary Public

19 My commission expires:  
20 \_\_\_\_\_  
21  
22  
23  
24  
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26

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8 reasonably equivalent value for any payment made to us by Tom Brown, laches, statute of  
9 limitations, and that line of case law which holds that victims of a Ponzi scheme who invested  
10 or loaned money in good faith should not be penalized.

11 DATED this 28 day of February, 2001.

12   
13 STEPHEN B. RUSSELL

14 SUBSCRIBED AND SWORN to before me this 28 day of February, 2001, by  
15 Stephen B. Russell.

16 M. Tilden Moschetti, Notary Public  
17 Notary Public

18 My commission expires:

19 Feb 19, 2003  
20

